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No. 84-1956

In the Supreme Court of the United States

OCTOBER TERM, 1985

D. L. AULD CO., PETITIONER

v.

CHROMA-GRAPHICS, CORP., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that the federal magistrate's trial and entry of judgment in this action with the consent of the parties pursuant to 28 U.S.C. 636(c) violates Article III of the Constitution.

On October 15, 1981, petitioner D.L. Auld Co. instituted this patent infringement action against respondent Chroma Graphics Corp. in the United States District Court for the Eastern District of Tennessee. With the consent of the parties, the case was referred for trial and entry of judgment to Magistrate Robert P. Murrian (Pet. App. 1-2). The magistrate granted Chroma Graphics' motion for summary judgment (Pet. App. 4), and the court of appeals affirmed. 714 F.2d 1144 (Fed. Cir. 1983).

Petitioner then moved in the district court for relief from the judgment pursuant to Fed. R. Civ. P. 60(b) (Pet. App. 6-8). In that motion petitioner contended for the first time

that the consensual reference to the magistrate violated Article III of the Constitution and that the judgment was therefore void. After the Rule 60(b) motion was denied (Pet. App. 9-11), petitioner appealed to the United States Court of Appeals for the Sixth Circuit, which transferred the appeal to the Federal Circuit (Pet. App. 15-18). The United States intervened pursuant to 28 U.S.C. 2403 to defend the constitutionality of 28 U.S.C. 636(c) (Pet. App. 19-22). The court of appeals then upheld the statute (Pet. App. 23-39).

In our brief in opposition in *Foreman* v. *Collins*, cert. denied, No. 83-1616 (Oct. 1, 1984), we explained why the question presented by petitioner does not merit review by this Court.[1] In addition, every court of appeals that has considered this question has upheld the constitutionality of 28 U.S.C. 636(c). This Court has consistently declined to grant certiorari. See *K.M.C. Co.* v. *Irving Trust Co.*, 757 F.2d 752 (6th Cir. 1985); *Gairola* v. *Commonwealth of Virginia*, 753 F.2d 1281 (4th Cir. 1985); *Fields* v. *Washington Metropolitan Area Transit Authority*, 743 F.2d 890 (D.C. Cir. 1984); *Geras* v. *LaFayette Display Fixtures, Inc.*, 742 F.2d 1037 (7th Cir. 1984); *Lehman Bros. Kuhn Loeb Inc.* v. *Clark Oil & Refining Corp.*, 739 F.2d 1313 (8th Cir. 1984) (en banc), cert. denied, No. 84-519 (Jan. 14, 1985); *Puryear* v. *Ede's Ltd.*, 731 F.2d 1153 (5th Cir. 1984); *Goldstein* v. *Kelleher*, 728 F.2d 32 (1st Cir. 1984), cert. denied, No. 84-5 (Oct. 1, 1984); *Pacemaker Diagnostic Clinic of America, Inc.* v. *Instromedix, Inc.*, 725 F.2d 537 (9th Cir. 1984) (en banc), cert. denied, No. 83-1873 (Oct. 1, 1984); *Collins* v. *Foreman*, 729 F.2d 108 (2d Cir. 1984), cert. denied, No. 83-1616 (Oct. 1, 1984); *Wharton-Thomas* v. *United States*, 721 F.2d 922 (3d Cir. 1983). This Court's recent analysis of Article III in *Thomas* v. *Union Carbide*

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[1]Copies of our brief in opposition in *Foreman* v. *Collins* are being served on counsel for the other parties in this case.

Agricultural Products Co., No. 84-497 (July 1, 1985), slip op. 13-14, 19, renders petitioner's contentions even less deserving of further review.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.[2]

CHARLES FRIED
Acting Solicitor General

JULY 1985

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[2]Because the United States intervened solely to defend the constitutionality of Section 636(c), we take no position on the second question presented.